Files: (b) (6) – Kansas City, MO
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Date: FEB 26 2018

In re (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Jason A. Oropeza
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, natives and citizens of El Salvador, have appealed the March 7, 2017, decision of the Immigration Judge denying an application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture.[1] The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the respondents to be a credible witnesses (IJ at 9-10). We find no clear error in the Immigration Judge's findings of fact. The lead respondent claims she was the victim of extortion by gang members, and that she fears future harm due to her refusal to pay the demands. The co-respondent claims he was the victim of gang recruitment, and that he fears future harm because he refused to join the gang.

We agree with the Immigration Judge that the respondents have not established their eligibility for asylum. The respondents' past experiences with gang members do not rise to the level of past persecution (IJ at 13). Furthermore, we agree with the Immigration Judge's conclusion that the lead respondent has not shown that the incidents experienced by her family members constitute persecution against her or the co-respondent (IJ at 13-14).

We also agree with the Immigration Judge that the respondents have not established a well-founded fear of persecution on account of an enumerated ground. Before the Immigration Judge, the respondents claimed membership in a proposed particular social group, members of

[1] The respondents are an adult female (lead respondent) and her minor child (co-respondent).

society who do not want to be members of gangs (IJ at 16; Tr. at 98). An applicant for asylum or withholding of removal seeking relief based on membership in a particular social group must establish that the group is composed of members who share a common immutable characteristic, defined with particularity, and socially distinct within the society in question. *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). To have "social distinction," there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). The issue of social distinction will depend on the facts and evidence in each individual case, including documented country conditions, law enforcement statistics and expert witnesses, if proffered; the respondent's past experiences; and other reliable and credible sources of information. *Matter of A-R-C-G-*, 26 I&N Dec. 388, 394-95 (BIA 2014).

The proposed group, members of society who do not want to be members of gangs, is not cognizable as a particular social group under the Act. The group is not defined with particularity. Furthermore, the respondent has not established that the proposed group is a socially distinct group within Salvadoran society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 238 ("A viable particular social group should be perceived within the given society as a sufficiently distinct group").

Furthermore, it is well established that gang recruitment does not constitute a nexus to a protected ground. *See Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008), *and Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008), *clarified by Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), *and Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). The record reflects that the co-respondent was the victim of gang recruitment. There is insufficient evidence in the record to demonstrate that there was any other motivation by the gang members.

For the first time on appeal, the lead respondent asserts that she is eligible for asylum based on her membership in a new particular social group that she has articulated as families that disobey the (b) (6) (Respondent's Brief at 10). The respondent has articulated a new social group that is substantially different from the one delineated at the hearing below. Because the group was not advanced below, the Immigration Judge did not have the opportunity to make the underlying findings of fact that are necessary to our analysis of the respondent's eligibility for asylum, and we cannot make these findings for the first time on appeal. *See Matter of W-Y-C-& H-O-B-*, 27 I&N Dec. 189 (BIA 2018); *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) ("The Board is an appellate body whose function is to review, not to create, a record."). The respondent was represented by counsel below and could have advanced this newly delineated group before the Immigration Judge. *Matter of W-Y-C-& H-O-B-*, 27 I&N Dec. at 192. Accordingly, we decline to remand proceedings for the Immigration Judge to make factual findings regarding the respondent's new particular social group and we will not consider the group in the first instance on appeal.

To the extent that the respondents' fear of returning to El Salvador is based on general conditions of criminal violence and civil unrest affecting their home country's populace as a whole, the Board has held that such conditions are not cognizable grounds for asylum. *See Matter of Sanchez and Escobar*, 19 I&N Dec. 276 (BIA 1985); *Matter of E-A-G-*, 24 I&N Dec. 591, 598 (BIA 2008) (prevalent gang violence does not establish a well-founded fear of persecution).

Therefore, the respondents' testimonies do not support the conclusion that an enumerated ground was or will be a central reason for their being targeted. Section 208(b)(1)(B)(i) of the Act.

Inasmuch as the respondents have not met their burden for asylum, it follows that they have also not satisfied the higher standard of a clear probability of persecution on account of a protected ground as required for withholding of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).

We have considered the respondents arguments on appeal regarding their request for protection under the Convention Against Torture. However, the respondents have not established eligibility for protection under the Convention Against Torture because they have not shown that they are more likely than not to be tortured in their country, by or at the instigation of or with the consent or acquiescence (including willful blindness) of a public official or other person acting in an official capacity. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). In this case, the record evidence does not indicate a likelihood that a Salvadoran official would acquiesce in any torture inflicted upon the respondents by gang members.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD